

(2) A person may not request an extension of time to file a petition to appeal.

(f) *Agency record.* (1) Within 20 days of receipt of the copy of the petition to appeal, the office that issued the initial administrative determination that is the subject of the appeal shall transmit the agency record to NAO.

(2) The office that issued the initial administrative determination shall organize the documents of the agency record in chronological order. Pages attached to a primary submission shall remain with the primary submission.

(g) *Agency participation in appeal.* Within 20 days of receipt of the copy of the petition to appeal, the office that issued the initial administrative determination that is the subject of the appeal may provide written notice to NAO that it will be a party to the appeal. An office issuing the initial administrative determination is not required to be a party.

§ 906.4 General filing requirements.

(a) *Date of filing.* Filing refers to providing documents to NAO.

(1) Except for the agency record required under § 906.3(f), all documents filed on behalf of an appellant or related to an appeal shall be submitted to NAO via facsimile. The facsimile number is: 301-713-2384. If the person filing does not have access to a fax machine, he or she may file by regular mail or commercial carrier addressed to Chief, National Appeals Office, 1315 East-West Hwy., Silver Spring, MD 20910.

(2) A document transmitted to NAO is considered filed upon receipt of the entire submission by 5 p.m. Eastern Time at NAO.

(b) *Copies.* At the time of filing a submission to NAO, the filing party shall serve a copy thereof on every other party, unless otherwise provided for in these rules.

(c) *Retention.* All submissions to NAO become part of a NAO case record.

(d) *Extension of time.* When a submission is required to be filed at NAO by a deadline, a party may request, in writing, an extension of time to file the submission, citing the specific reason(s) for the need for an extension. NAO may grant one extension of up to

30 days if an appellate officer determines the party has established good cause for an extension of time, taking into account whether the party timely requested the extension or the extent to which the party missed the deadline.

§ 906.5 Service.

(a) Service refers to providing documents to parties to an appeal.

(1) Service of documents may be made by first class mail (postage prepaid), facsimile, or commercial carrier, or by personal delivery to a party's address of record.

(2) Service of documents will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to a commercial carrier, or upon personal delivery.

(b) A party shall serve a copy of all documents to all other parties and shall file a copy of all documents with NAO the same business day.

(c) NAO may serve documents by electronic mail.

§ 906.6 Ex parte communications.

(a) *Ex parte communication* means any oral or written communication about the merits of a pending appeal between one party and the NAO with respect to which reasonable prior notice to all parties is not given. However, ex parte communication does not include inquiries regarding procedures, scheduling, and status.

(b) Ex parte communication is not permissible unless all parties have been given reasonable notice and an opportunity to participate in the communication.

(c) If NAO receives an ex parte communication, NAO shall document the communication and any responses thereto in the NAO case record. If the ex parte communication was in writing, NAO shall include a copy of the communication in the NAO case record. If the ex parte communication was oral, NAO shall prepare a memorandum stating the substance of the oral communication, and include the memorandum in the NAO case record. NAO will provide copies of any such materials included in the NAO case record under this paragraph to the parties.

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(d) NAO may require a party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected because of an ex parte communication.

(e) NAO may suspend this section during an alternative dispute resolution process established by regulation or agency policy.

(f) Communication with NAO, including appellate officers, concerning procedures, scheduling, and status is permissible.

§ 906.7 Disqualification of appellate officer.

(a) An appellate officer shall disqualify himself or herself if the appellate officer has a perceived or actual conflict of interest, a perceived or actual prejudice or bias, for other ethical reasons, or based on principles found in the American Bar Association Model Code of Judicial Conduct for Administrative Law Judges.

(b) Any party may request an appellate officer, at any time before the filing of the appellate officer's decision, to withdraw on the ground of personal bias or disqualification, by filing a written motion with the appellate officer setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) The appellate officer, orally or in writing, shall grant or deny the motion based on the American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges and other applicable law or policy. If the motion is granted, the appellate officer will disqualify himself or herself and withdraw from the proceeding. If the motion is denied, the appellate officer will state the grounds for his or her ruling and proceed with his or her review.

§ 906.8 Scheduling and pre-hearing conferences.

(a) NAO may convene a scheduling and/or pre-hearing conference if, for example, an appellate officer in his or her discretion finds a conference will materially advance the proceeding.

(b) NAO shall notify the parties in writing 10 days prior to a conference unless the Chief of NAO orders a short-

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er period of time for providing notice of conducting a conference. A party may request one change in the scheduled pre-hearing date. In determining whether to grant the request, NAO will consider whether the requesting party has shown good cause for the change in date.

(c) In exercising his or her discretion whether to hold a scheduling and/or pre-hearing conference, an appellate officer may consider:

(1) Settlement, if authorized under applicable law;

(2) Clarifying the issues under review;

(3) Stipulations;

(4) Hearing(s) date, time, and location;

(5) Identifying witnesses for the hearing(s);

(6) Development of the NAO case record, and;

(7) Other matters that may aid in the disposition of the proceedings.

(d) *Recording.* NAO may record the conference.

(e) *Format.* At the discretion of the appellate officer, conferences may be conducted by telephone, in person, or by teleconference or similar electronic means.

(f) NAO may issue a written order showing the matters disposed of in the conference and may include in the order other matters related to the appeal.

§ 906.9 Exhibits.

(a) The parties shall mark all exhibits in consecutive order in whole Arabic numbers and with a designation identifying the party submitting the exhibit(s).

(b) Parties shall exchange all exhibits that will be offered at the hearing at least 10 days before the hearing.

(c) Parties shall provide all exhibit(s) to NAO at least 5 days before the hearing.

(d) NAO may modify the timeframe for exchanging or submitting exhibits if an appellate officer determines good cause exists.

(e) NAO may deny the admission into evidence of exhibits that are not marked and exchanged pursuant to this rule.